

September 13, 2016

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 13th day of September, 2016, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Straight called the meeting to order.

Councilmembers present were:

First District	Marianne Moran
Second District	Frank G. Yann
Third District	Robert (Rob) Linger
Fourth District	William H. (Bill) Burdick
Sixth District	Daniel K. (Dan) Weber
Seventh District	Philip R. (Phil) Mason
Eighth District	Thomas (Tom) Mainella
Ninth District	Ronald J. (Ron) Straight, Sr.

Absent:

Fifth District	Fran Warner
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Also present were:

City Manager	Robin I. Gomez
City Clerk	Janet L. Keller
City Attorney	Kevin Sansalone
Police Chief	Steve Shine
Fire Chief	Ed Simmons

IN RE: EXCUSE COUNCILMEMBER WARNER

Councilmember Mainella moved to excuse Councilmember Warner from tonight's meeting. The motion was seconded by Councilmember Linger.

The Mayor declared Councilmember Warner excused from tonight's meeting by voice vote of Council.

IN RE: OPENING CEREMONIES

Rev. Larry Buckland of Life United Methodist Church gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Weber.

APPROVAL OF MINUTES

Mayor Straight noted that each member of Council had received a copy of the minutes from the Regular Meeting held on August 23, 2016.

Councilmember Mason moved to approve the minutes as submitted. The motion was seconded by Councilmember Mainella.

The Mayor declared the minutes approved as submitted by voice vote of Council.

PUBLIC HEARINGS

IN RE: AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT APPROVING THE TERMS AND CONDITIONS OF THAT CERTAIN MEMORANDUM OF EXTENSION OR RENEWAL OF THE CONTRACT DATED SEPTEMBER 1, 2011, BY AND BETWEEN THE CITY OF FAIRMONT, A MUNICIPAL CORPORATION, AND ALLIED WASTE SYSTEMS OF NORTH AMERICA, INC., A CORPORATION, D/B/A REPUBLIC SERVICES, PROVIDING FOR AN EXTENSION PERIOD OF FIVE (5) YEARS FROM SEPTEMBER 1, 2016; FIXING RATES, FEES AND CHARGES FOR THE RENEWAL TERM; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER THE MEMORANDUM ON BEHALF OF THE CITY

Pursuant to a notice duly published in the Times-West Virginian on August 15, 2016 and August 22, 2016, a public hearing was convened to obtain citizen input on a proposed ordinance approving the terms of a renewal of the contract with Allied Waste Systems d/b/a Republic Services.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

JOHN MCGORAN, Manager of Municipal Services for the Western Pennsylvania area for Republic Services spoke in favor of the proposed ordinance and rate increase. He gave a presentation on why Republic Services is raising rates in the Fairmont area. He said the company is raising rates because cost to do business is increasing. He went on to say that the cost of doing business is increasing because Republic Services has had to deal with a tight labor market, which means that they have to pay drivers more. There are also regulations on trucks due to the Federal Clean Air Act that have increased costs. He also mentioned that there are changes in what makes up recyclables since the first contract in 2011. The change in materials that people are recycling has increased the cost of Republic

processing the materials and the cost of moving the materials out of state has increased. Mr. McGoran said that the rate that Republic Services wants to charge Fairmont is comparable to other areas in Marion County and those areas have garbage collection only. Republic offers Fairmont recycling and offers free pickup at some city facilities like the Fairmont Fire Department and Public Safety Building.

ANTHONY HORTON, 914 Lewis Street, spoke against the proposed ordinance. Mr. Horton said he was speaking on behalf of the elderly and the poor. He said that he was fed up with fee after fee after fee with the City of Fairmont. Our community is a bedroom community and is made up of 70% of the people who are over 65 years old and who is going to be required to pay this additional fee. He noted that the median income for Fairmont for a family is \$25,000 and asked Council to imagine trying to raise a family on \$25,000 per year and pay your bills. People who do not have money cannot even afford this. He added that the City of Fairmont has a 1% sales tax, a user fee, sewage treatment fee, water treatment fee, street sweeping fee, fire fee and a roof run-off fee in which there are no storm sewers in Jackson Addition. He went on to say that there are people living on \$500 to \$600 per month who is going to have to pay this additional fee and it is not fair. He said that the City has more than enough money in their coffers, based on all of these user fees, to pay whatever Republic needs to maintain their services. This should not be passed on to the citizens of Fairmont, enough is enough. Our community is made up of a bunch of poor and old people and they are going to be required to pay another fee and some people cannot pay what they have to pay now. He then asked Council to keep the elderly in their consideration when they vote on this new contract for Republic Services.

ED VINCENT, a Maple Avenue resident, stated that he was confused about the rates. His understanding of the increases was that they were going to \$18.00 something, as reported by the newspaper, and then substantial increases for the next five years, however, the slide show showed \$16.85 for the garbage rates.

Mr. Gomez said that if Council adopted the agreement as presented, the new rate will be effective October 1, 2016 and will be \$16.75 per unit per month. The old rate was \$14.90 which is a 12.8% increase. The rates will increase 3% a year for the rest of the five years of the contract as well. The rate will increase to \$17.25 per month in the second year, \$17.75 in the third year, \$18.30 in the fourth year and \$18.85 in the fifth year.

Mr. Vincent said that is significantly lower than what the newspaper quoted about a month back. He said that they were talking about starting out year

one at \$18.00 something and then going up to \$19.00 or \$20.00 after that. He then said that actually alleviates a lot of his concern about it and that is a big difference. He said with that, he doesn't have much else to say about it.

DEBBIE HARVEY, Director of the Marion County Senior Citizens, stated her job is to be an advocate for the seniors. She said that she had heard from some of the Councilmembers before the meeting that they have actually went out and spoke to some of the seniors in areas that they are in. She asked each Councilmember to go out and talk to their seniors because a lot of them will not know what is happening until they actually get their bill. She said that the average income for seniors is \$1,000.00 per month and some people get less than that and many are choosing between medicine and food and the fees are getting to them. She then said that there are several of the elderly citizens that may have one garbage bag and it's sad that they are going to have to pay the same rate as someone that has a family of four. She said that her main concern is how they came up with the fee increase (directing her question to Mr. McGoran) and how did he arrive at 12.8% increase and 3% for each year after that. She then asked Mr. McGoran with help on their dumpster at the Senior Citizens Center. She even asked Mr. McGoran to talk to the seniors to see how this rate increase is going to impact them. She then encouraged all Councilmembers to ask the seniors and be the voice for them. She added that the seniors have not been getting raises on their social security and what raises they do get are very minimal.

Councilmember Burdick asked Ms. Harvey if she knew what the Sunshine Laws are.

Ms. Harvey replied no.

Councilmember Burdick said that basically public meetings have to be opened to the public and at the August 9th meeting Ms. Harvey asked Council to go behind doors and vote on this.

Ms. Harvey said no, she said that you should humor her and go behind closed doors to discuss this. You should discuss things before you voted and she was sorry if that is how it came out but that is what she meant. She then told Council that she thought a public hearing was so they could hear people's concerns and you are hearing concerns this evening so how can you immediately vote if you do not discuss what concerns were brought up. She asked Council how you can vote when people are all giving you concerns about this fee increase and you are all going to take a vote without going as a group and having a discussion about it. She asked again how Council can vote on something when 50 people or 10 people bring things to your

attention and then you immediately vote without discussion.

Mr. Gomez said that Council cannot discuss behind closed doors either, that violates the law. That is what we are doing right here right now.

Ms. Harvey said that when people get done speaking, Council is going to sit here for an hour and discuss everything that is brought up.

Mr. Gomez said however long Council would like to discuss it, they can discuss it as long as they would like.

Ms. Harvey said the last time she was here, it got voted on with no discussion at all and that was her concern. She felt that she would come and talk and the vote would take place. He then told Mr. Gomez that he was not here, she was, and she knew what took place.

The Mayor said that all Council did last time was to set the public hearing.

Mr. Harvey informed Council that she was talking about when the paving assessment came out. She said that Council had a room full of people . . .

The Mayor tried to explain to Ms. Harvey but she interrupted him to say that Council asked her the question . . .

The Mayor asked Ms. Harvey to keep on track.

Ms. Harvey said she was until somebody brought up the past to her so she discussed it.

Councilmember Yann stated that he sees the seniors quite often and talks to them, however, they tell him that they are satisfied with the process they are getting. He said the only thing they have asked him is why no one else wants to come in as their competition. He then asked if it could be discussed why we don't have a bid process because we do have different faces. He said that he talks to these people and he is not getting the complaints.

Ms. Harvey said that they will not complain because they know no matter what they have to pay it, it is on their water bill. They will not talk about it because they don't like to admit to people that they can't pay things.

DANIEL KUNEFF, 624 Maryland Avenue, also spoke against the proposed ordinance. He asked Mr. McGoran with Republic Services what happens after the five years and asked if they are coming back to ask for more

money at that time. He asked if the City can offer an "elderly discount" for those over 65 years of age or a senior citizen discount on their primary dwelling. He then asked about the laid off coal miners or those in the gas and oil industry. He said coal is down and every bit of work that is based around coal mines is down. He then asked for a discount for those laid off, if they lose their job, lose their primary income, give them a discount until they find a job. He asked Mr. McGoran again, what happens after the five years and if they were coming back in six years asking for more money.

Councilmember Yann responded by saying that if they don't accept it and then we have to take it out of our budget, then that cuts down on other city services.

Mr. Kuneff said that they are making a lot of money off the City of Fairmont.

Councilmember Yann said that if they don't want to do that and we try and give a discount, are you saying that the City should give a discount or Republic?

Mr. Kuneff then asked Mr. McGoran if he would mind giving his mother a discount for her trash service.

Councilmember Mainella asked the Mayor if these people are supposed to be addressing Council and not Republic Services.

The City Manager said yes, addressing Council.

Mr. Kuneff said that he would not have a problem giving his Mom or his Grandmother a discount for any services that he would ever render.

The Mayor said that he got his parents all of the discounts that he could get them. He mentioned that he also delivered meals on wheels and not one of the seniors brought up to him about the fee getting increased. He added that their biggest thing was that they were tickled to death about the service that they are getting. He then said that if Council does not vote for this . . . He then told Mr. Kuneff that he knows what type of business that he's in and that he thrives on coal and oil and gas and we run a business here just like he does. He said that if we don't do what we are supposed to do as City Officials, then tomorrow when you have garbage piled up around you, what do you do? He said that he brought up five years, that's five years down the road, we may be booming by then, and he hopes we are. You have to run it as a business and he knows that Mr. Kuneff's business has not set the same prices since way back and you have to raise your prices accordingly. He said that we, as a City, have to take a look at that because we are running a

business.

J.P. PHILLIPS, co-owner and vice president of Mountain State Waste, asked Council to be considered before the contract is renewed with Republic Services. He said that Mountain State Waste is a fairly new company and started in 2013 by himself and his partner that service 14,000 residential customers and about 1,000 commercial customers in 13 counties in WV. He said that they are located in Weston and have operations in Monongalia County, Taylor County, Lewis County, and Wayne County. He said that they have about 60 employees and have assembled one of the most diversified and experienced management teams in WV in this business. He asked Council to give him the opportunity to prove what they can do and knowing that is a big hurdle, he wants to make sure that Fairmont gets the best deal that we can get. He mentioned that he gave a proposal to the City Manager a few weeks ago and his proposal will save the residents of Fairmont about \$600,000 over five years of that contract. He noted that he wants Council to know that there are other options out there and there are other people that want to service this contract. He then asked Council for consideration and wanted to make sure that Fairmont gets the best deal that they can get.

Councilmember Weber said that in 2011, he was on the committee to select the hauler and we didn't have Mountain State at that time but perhaps what we ought to do, as Council, is to maybe rethink this and maybe rebid the process to get the lowest bidder.

Mr. Gomez said that currently Republic is the only company in WV that can provide garbage and recycling services within our corporate limits. Under the WV Public Service Commission ruling, they must have either an agreement with us but still must have a common carrier certificate to be able to provide service. He said that Mountain State has stated that because they are involved in interstate commerce, that they would haul all of our trash collected in Fairmont to another state, to Pa, and that they would be exempt from that provision in the WV Code. We are under the opinion that is not correct and that they do need the permission from the Public Service Commission to be able to provide the trash collection. Mountain State Waste will state that they can do that and it is our understanding that is not possible. The reason why five years ago, the City of Fairmont only received the bid from Republic, Smallwood was not able to provide throughout the entire City because they did not have the PSC's approval to be able to provide collection for the entire City of Fairmont. The only company that could at the time was Republic Services and even Waste Management does not have the ability to provide the garbage collection within our corporate limits. He said that he is all for competition and open market and let anyone come in who would like to do it but the State of WV has some processes and

under their current Code, that makes it less than simple or something that can be done right away. He would be more than happy to bid this out and we can ask Republic if they would like to continue with the current contract which he has asked several times and then answer was essentially "no". It is Council's pleasure how you want us to continue but there are limiting circumstances under current WV Code and PSC's rules that regulate or dictate how this process should go. He then mentioned that he thought there were 120 day provision or notifying them if we would discontinue the current agreement. So we would have to notify of 120 days that we are no longer continuing with the existing agreement.

Mr. Sansalone said there is a cancellation provision but he didn't know what it was until he looked.

Mr. Phillips said that you have to have a certificate of need from the PSC of WV, however, in 2004 the 4th District Court made a decision, Harper vs. WV PSC, that if the trash is collected in WV and transported across the state line, then the PSC has no regulation over that waste. He said yes, we can service the City of Fairmont. He then told Council to ask Republic Services if they service any customers in WV where they do not have a PSC certificate and the answer is "yes". If they say they don't know, you can ask them, do they pick-up customers in Kanawha County and Putnam County and the answer is yes.

There being no one else to speak, the public hearing was called to a close at 8:02 p.m.

IN RE: AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING PART FIVE - GENERAL OFFENSES CODE, ARTICLE 545 WEAPONS, SECTION 454.03 FIREWORKS SALE AND DISCHARGE, TO PROVIDE FOR AND ACCOMMODATE CHANGES NECESSITATED BY THE ADOPTION OF WEST VIRGINIA CODE 29-3E-1 ET SEQ., FIREWORKS SAFETY, BY THE WEST VIRGINIA LEGISLATURE

Pursuant to a notice duly published in the Times-West Virginian on August 29, 2016, a public hearing was convened to obtain citizen input on a proposed ordinance amending the General Offenses Code regarding Fireworks.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

JUNIOR BENNETT, a resident of Lewis Street, stated that he thought the time should be extended to stop fireworks at 11:00 p.m. instead of 10:00

p.m.

There being no one else to speak, the public hearing was called to a close at 8:04 p.m.

ANNOUNCEMENTS

IN RE: 911 EVENT

Councilmember Burdick stated that it is hardly to believe that it has been 15 years since the 911 event. It just seems like yesterday.

IN RE: SUMMER EVENTS

Councilmember Linger thanked all of those involved in the summer events and thanked everyone for showing their support. He noted that a lot of good things were going on in Fairmont.

IN RE: CITY AND COUNTY COOPERATION

Councilmember Yann stated that it was good to see cooperation between the City and the County during the grand opening of the new boat dock at Palatine Park.

IN RE: MEETING ATTENDANCE

Councilmember Moran thanked everyone for attending tonight's meeting. She told everyone in attendance that Council puts a lot of time and effort into the decisions that are made.

IN RE: TIMES WEST VIRGINIAN

Councilmember Weber thanked the Times West Virginian for the lack of their public information on our meeting tonight and for not publishing the agenda as he has requested numerous times. He said that we would have more people here tonight if the Times would publish the agenda but he said that for some reason the Times has no interest in that.

IN RE: CITY MANAGER THANKED

Councilmember Weber thanked the City Manager for talking to the students at Whitehall School about positive behavior support program and about taking care of each other and respect each other and to keep out city clean.

IN RE: RESIDENTS THANKED

Councilmember Weber then thanked all of the people who live outside the corporate limits of Fairmont for their help in paving our streets by paying the Street Maintenance Charge.

CITIZENS PETITIONS

There were no citizen's petitions for this meeting.

CITY MANAGER'S REPORT

IN RE: COUNTY COMMENDED

Mr. Gomez commended the County, MCPARC and John Provins for all of the work this summer for all of the events at Palatine Park.

IN RE: STREET PAVING PROJECT

The City Manager reported that the street paving project is underway and then thanked the public for their patience and understanding while the project is going on.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT APPROVING THE TERMS AND CONDITIONS OF THAT CERTAIN MEMORANDUM OF EXTENSION OR RENEWAL OF THE CONTRACT DATED SEPTEMBER 1, 2011, BY AND BETWEEN THE CITY OF FAIRMONT, A MUNICIPAL CORPORATION, AND ALLIED WASTE SYSTEMS OF NORTH AMERICA, INC., A CORPORATION, D/B/A REPUBLIC SERVICES, PROVIDING FOR AN EXTENSION PERIOD OF FIVE (5) YEARS FROM SEPTEMBER 1, 2016; FIXING RATES, FEES AND CHARGES FOR THE RENEWAL TERM; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER THE MEMORANDUM ON BEHALF OF THE CITY

Mayor Straight entertained a motion for the adoption of an ordinance to approve the terms of the contract between the City of Fairmont and Republic Services.

Motion:

Councilmember Mainella moved for the adoption of the proposed ordinance. Councilmember Moran seconded the motion.

Discussion:

Councilmember Yann said that if this went to the PSC, then we would have no, during that time until they made their decision, we would have no recycling.

Mr. Gomez said that was correct. He said that Republic would not be required or obligated to have a recycling program so it would be up to them if they wanted to continue to collect recyclables.

Councilmember Yann then stated that if it goes to the State, they can decide that they can have more than what they are asking us for now.

The City Manager said that was correct. He noted that it would be up to the PSC to determine a rate going forward and Republic is preparing a filing for an increase in the situation.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Mason	Yes	Councilmember Mainella	Yes
Councilmember Burdick	Yes	Councilmember Moran	Yes
Mayor Straight	Yes	Councilmember Linger	No
Councilmember Weber	No	Councilmember Yann	No

The Mayor declared the ordinance adopted by majority vote of those Councilmembers present and the ordinance designated as Ordinance No. 1702 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING PART FIVE - GENERAL OFFENSES CODE, ARTICLE 545 WEAPONS, SECTION 454.03 FIREWORKS SALE AND DISCHARGE, TO PROVIDE FOR AND ACCOMMODATE CHANGES NECESSITATED BY THE ADOPTION OF WEST VIRGINIA CODE 29-3E-1 ET SEQ., FIREWORKS SAFETY, BY THE WEST VIRGINIA LEGISLATURE

Mayor Straight entertained a motion for the adoption of an ordinance amending the Code regarding Fireworks.

Motion:

Councilmember Linger moved for the adoption of the proposed ordinance. Councilmember Burdick seconded the motion.

Discussion:

Councilmember Burdick asked if Council was going to look at the comment from the public hearing about extending the time by one hour, but not delay the vote on this item.

Mr. Sansalone explained that it has been introduced in final form and you would either have to vote it as it is or table it or vote it down. He noted that if you table it, it is not going to make any change because the language that is provided for in the ordinance, you would have to introduce a new ordinance to change the time to 11:00 p.m.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1703 was duly adopted.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE TO APPROVE AND ADOPT CURRENT REPLACEMENT PAGES TO THE FAIRMONT CITY CODE

Mayor Straight entertained a motion and a second for the introduction of an ordinance to approve and adopt current replacement pages to the Fairmont City Code.

Motion:

Councilmember Mainella moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Linger seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor declared the public hearing set for September 27, 2016 by voice vote of Council.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ORDINANCE NO. 1691, DULY ADOPTED JUNE 14, 2016, WHICH PROVIDES FOR THE CITY OF FAIRMONT'S CURRENT PAY PLAN AND LIST OF OCCUPATIONAL CLASSES FOR ALL CLASS TITLES AND EMPLOYEES, TO PROVIDE FOR THE FOLLOWING: RECLASSIFICATION OF CERTAIN

POSITIONS FROM EXEMPT STATUS TO NON-EXEMPT STATUS TO COMPLY WITH THE FINAL RULE TO BE EFFECTIVE DECEMBER 1, 2016, WHICH RE-DEFINED CERTAIN EXEMPTIONS UNDER THE FAIR LABOR STANDARDS ACT; INCREASING THE BASE PAY FOR PROBATIONARY POLICE OFFICER; ELIMINATING THE POSITION OF MASTER BUILDING INSPECTOR; RE-ESTABLISHING THE SPECIAL DUTY ASSIGNMENT PAY FOR FIRE PREVENTION TRAINING OFFICER; PROVIDING CERTIFICATION PAY AT THE RATE OF \$0.28 PER HOUR FOR A FIREFIGHTER WITH A BACHELOR'S DEGREE; AND RE-ESTABLISHING AN HOURLY RATE FOR CROSSING GUARDS

Mayor Straight entertained a motion and a second for the introduction of an ordinance amending the current Pay Plan.

Motion:

Councilmember Moran moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Linger seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

Discussion:

Councilmember Weber asked if the school crossing guards were going to get an increase.

Mr. Sansalone said that it is currently at an annual rate and it has caused issues with the way that they work and so it's going back to the previous hourly rate but the hourly rate is based on the current annual rate and there is no increase in the pay. Same annual rate just divided and changed to an hourly rate because of the way that they are paid and the way they work and the way they want to work.

Mr. Gomes said that they were part of the 3% pay increase that was adopted back in April.

Mr. Sansalone said that it just changes it from an annual rate to an hourly rate.

Mr. Gomez went over the other changes in the proposed ordinance:

- Reclassifying certain positions from exempt status to non-exempt status to comply with the final rule (29 CFR Part 541) issued by the United States Department of Labor defining and delimiting the exemptions for executive, administrative, professional and other employees under the Fair Labor Standards Act, 29 U.S.C. §201 et seq., which Rule will become effective on December 1, 2016;
- Increasing the base pay for Probationary Police Officer;
- Eliminating the position of Master Building Inspector;
- Re-establishing the special duty assignment pay for Fire Prevention Training Officer at the current level; and
- Providing certification pay at the rate of \$0.28 per hour for a Firefighter with a bachelor's degree;
- Re-establishing an hourly rate for crossing guards without increase.

The Mayor declared the public hearing set for September 27, 2016 by voice vote of Council.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING PART THREE – TRAFFIC CODE, CHAPTER FIVE–VEHICULAR OPERATIONS, ARTICLE 343 SPECIAL STOPS REQUIRED OF THE FAIRMONT CITY CODE, AND MORE PARTICULARLY SECTION 343.07 STOPPING FOR SCHOOL BUS; SIGNS AND WARNING LIGHTS; SALE OF SCHOOL BUS; AND SECTION 343.99 PENALTY THEREOF, TO PROVIDE FOR AND MEET CERTAIN CHANGES MADE TO THE LAWS OF THE STATE OF WEST VIRGINIA IN 2016

Mayor Straight entertained a motion and a second for the introduction of an ordinance amending the Code regarding Stopping for School Buses.

Motion:

Councilmember Weber moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Mainella seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor declared the public hearing set for September 27, 2016 by voice vote of Council.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING PART FIFTEEN – FIRE PREVENTION CODE OF THE FAIRMONT CITY CODE, AND IN PARTICULAR THE PROVISIONS OF ARTICLE 1523 OPEN BURNING, SECTION 1523.02 OPEN BURNING PERMITTED; GENERAL PROVISIONS, AND SECTION 1523.99 PENALTY, THEREOF, TO PROVIDE FOR THE ENHANCED PROTECTION OF THE HEALTH, SAFETY, COMFORT AND PROPERTY OF OTHERS FROM PARTICULATE MATTER RESULTING FROM PERMITTED OPEN BURNING

Mayor Straight entertained a motion and a second for the introduction of an ordinance amending the Code regarding Open Burning.

Motion:

Councilmember Linger moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Yann seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

Discussion:

Councilmember Weber asked if this was a large problem in the City.

Mr. Sansalone said that yes, it is a problem. He noted that it does not allow for the burning of trash, it only allows for the burning of debris that is grown or yard waste on a property and it will also now regulate open burning such as burning in a fire pit. He said that it is his understanding that the ash that is generated from fire pits travels from one property to another and is interfering with the adjoining property owner's rights to peace. He noted that it was an attempt at regulating that and providing the Fire Chief with the ability to cause those persons who are burning to extinguish the fire so that the comfort and safety and health of the neighboring property owners is protected.

Mr. Linger said that basically if they are having a fire and someone says you have to put that out, then they have to put it out.

Mr. Sansalone said yes and if they don't put it out, then they have to pay a fine at the discretion of the Municipal Judge.

Councilmember Mainella said that only if it interferes with the neighbor.

Mr. Sansalone said that he understands that there are problems in the City that have been brought to our attention on multiple occasions where one neighbor burns a fire pit and the fire from that fire pit the ash rises up in the air with hot smoke and travels across the property line to the neighboring property, settles on his or her vehicle, gets in their yard, gets on the porch furniture and they call and complain and there was not any ability for the City to order them to extinguish the fire because the previous ordinance only addressed open burning for yard waste and debris so in order to give the Fire Chief more ability to order the offending property owner to extinguish the fire, we have not included the opening burning provisions of the State Code which is a small fire or a fire in a fire pit or fires from burning of brush, etc.

Councilmember Weber that is already addressed in the State law so why do we need a City ordinance to do the same thing as a State ordinance.

Mr. Sansalone said because he was requested to prepare one so the Fire Chief could enforce it through Municipal Court and he complied with the request.

Councilmember Weber asked if it was frivolous to do that since we already have the State law.

Mr. Sansalone said that we have multiple parallel provisions because that allows then the local Police Department to bring those violations to Municipal Court as opposed to going to Magistrate Court. He said that if we didn't have the City ordinances, then all of those cases would have to be prosecuted in Magistrate Court and then the City would lose the revenue.

Councilmember Weber noted that now he understands, it all about the dollars.

Mr. Sansalone said that in this instance there was a perceived problem so he was requested to prepare an ordinance and he prepared an ordinance that he believed would pass constitutional muster that is within the confines of

the City's criminal jurisdiction and has been presented to Council for introduction.

The Mayor declared the public hearing set for September 27, 2016 by voice vote of Council.

IN RE: ADOPTION, A RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT ENDORSING THE HOMEBREWERS AGAINST HUNGER EVENT SPONSORED BY THE FAIRMONT HOMEBREWERS CLUB TO BE HELD AT PALATINE PARK ON SATURDAY, OCTOBER 8, 2016.

Mayor Straight entertained a motion for the adoption of a resolution endorsing the Homebrewers Club event to be held on Saturday, October 8, 2016 at Palatine Park.

Motion:

Councilmember Linger moved for the adoption of the resolution. The motion was seconded by Councilmember Yann.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of those Councilmembers present.

ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Mason moved to adjourn the meeting. The motion was seconded by Councilmember Linger.

The Mayor declared the meeting adjourned by voice vote of Council at 8:45 p.m.